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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,094	08/22/2001	Michael A. Mitchell	29827/37398	9354

4743 7590 10/30/2003

MARSHALL, GERSTEIN & BORUN LLP
6300 SEARS TOWER
233 S. WACKER DRIVE
CHICAGO, IL 60606

EXAMINER	
YOON, TAE H	

ART UNIT	PAPER NUMBER
1714	

DATE MAILED: 10/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/935,094	MITCHELL ET AL.	
	Examiner	Art Unit	
	Tae H Yoon	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-54* is/are rejected.

7)☐ *Claim(s) _____ is/are objected to.*

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-54 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-85 of U.S. Patent No. 6,072,101. Although the conflicting claims are not identical, they are not patentably distinct from each other because the resin and diaper of instant application and diaper encompass those of said patent. Also, the recited "about 75% acid moieties present in the free acid form" of said patent means "about 25% neutralization" which encompasses the instant "greater than 25% neutralization" since said "greater than 25% neutralization" can be 25.01% and since said "about" permits some deviation from 25%. The claim 1 of said patent teaches that multicomponent SAPS comprising at least one acidic water-absorbing resin and at least one basic water absorbing resin and said "at least" permits more than one resin.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *Patentability shall not be negatived by the manner in which the invention was made.*

Claims 1-25 and 35-54 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Beihoffer et al (US 6,072,101).

Beihoffer et al teach the instant multicomponent superabsorbent gel particles comprising at least one acidic water absorbing resin and at least one basic water absorbing resin dispersed throughout a matrix resin at col. 4, lines 37-65, col. 11, lines 64 to col. 12, line 67, col. 14, lines 47-58 and in claims. Particle sizes (col. 6, lines 56-61), surface crosslinking (col. 8, lines 1-38 and claim 6) and diaper and catamenial device (claim 21) are also taught. The use of at least 15% of said superabsorbent gel particles in a core of diaper is an inherent practice in the art, and many commercial diapers contain such amount of gel in a core. The recited acquisition rate is an inherent property of the diaper of Beihoffer et al since the same superabsorbent gel particles are used. Thus, the instant invention lacks novelty.

Claims 1-54 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Beihoffer et al (US 6,072,101).

The claim 26 further recites a third water-absorbing resin. However, Beihoffer et al teach that multicomponent SAPS comprising at least one acidic water-absorbing resin and at least one basic water absorbing resin at col. 4, lines 15-18, and said "at least" permits more than one resin.

Thus, it would have been obvious to one skilled in the art at the time of invention to employ third water-absorbing resin either acidic or basic in forming multicomponent SAPS of Beihoffer et al since Beihoffer et al teach such modification.

Claims 1, 3, 4, 6, 7, 9-14, 16-18 and 23-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bolto et al (J. Polymer Sci.; Symposium No. 55, 87-94 (1976)).

Bolto et al teach the instant multicomponent superabsorbent gel particles comprising at least one acidic water absorbing resin and at least one basic water absorbing resin in abstract and Fig. 1. The use of triallylamine and (meth)acrylic acid and salts thereof is taught at page 89. The recited "up to about 1%" and "up to about 10,000 ppm" of claims 12 and 13 encompasses 0%. Thus, the instant invention lacks novelty.

Claims 1, 3, 4, 6, 7, 9-14, 16-18 and 23-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bolto et al (J. Polymer Sci.; Symposium No. 55, 87-94 (1976)).

The instant invention further recites the use of a crosslinker. However, Bolto et al teach employing a crosslinking agent at page 91, lines 5-7 in order to improve the physical integrity of the particles.

It would have been obvious to one skilled in the art at the time of invention to utilize the recited amount of a crosslinking agent in Bolto et al since Bolto et al teach employing a crosslinking agent and since the use of a small amount such as up to 1 wt% is a routine practice in the art of swellable polymeric particles.

Claims 1, 3-14, 16-20 and 23-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bolto et al (The role of polyamine resins in thermally regenerable ion exchange, pp 365-376, 1979 of Polymeric Amines and Ammonium Salts).

Bolto et al teach the instant multicomponent superabsorbent gel particles comprising at least one acidic water absorbing resin and at least one basic water absorbing resin (and a polymeric matrix) in abstract and at pages 372-374. Thus, the instant invention lacks novelty.

Claims 1, 6-18 and 21-54 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 95/22358.

WO teaches the instant multicomponent superabsorbent gel particles comprising at least one acidic water absorbing resin and at least one basic water absorbing resin (and a surface crosslinking thereof) and its use in a diaper in abstract and examples and at pages 11-16. The recited acquisition rates are inherent in gel of WO. The use of a mixture of polymers as a hydrogel-forming absorbent polymer is taught at page 16, lines 20-23 which would meet the instant claim 26 reciting a third water-absorbing resin. Any combination of layer well known in the art would be a routine practice. Thus, the instant invention lacks novelty.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H Yoon whose telephone number is (703) 308-2389. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Tae H Yoon
Primary Examiner
Art Unit 1714

THY/October 27, 2003